

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

SAMUEL SOTO,

Defendant.

No. CR-08-6049-EFS

**ORDER GRANTING DEFENDANT'S MOTIONS
AND THE GOVERNMENT'S MOTION FOR
ORDER OF DISMISSAL WITHOUT
PREJUDICE**

Before the Court are Defendant Samuel Soto's Motion to Reconsider Motion to Suppress Physical Evidence (Ct. Rec. [59](#)) and Motion to Withdraw Guilty Plea (Ct. Rec. [63](#)). The Government concedes that Defendant has shown a fair and just reason for withdrawal of the guilty plea under Federal Rule of Criminal Procedure 11(d)(2)(B) given the Supreme Court's recent *Arizona v. Gant*, -- S.Ct. --, 2009 WL 1045962 (April 4, 2009), decision; the Government therefore does not oppose Defendant's motions. In addition, the Government filed a Motion for Order of Dismissal Without Prejudice. (Ct. Rec. [68](#).)

The Court agrees that withdrawal of the guilty plea is appropriate and suppression of the physical evidence obtained during the vehicle search is required under *Gant*. Leave of Court is given to dismiss the

1 Indictment (Ct. Rec. 1). The Court makes no judgment as to the merit or
2 wisdom of this dismissal.

3 For these reasons, **IT IS HEREBY ORDERED:**

4 1. Defendant's Motion to Reconsider Motion to Suppress Physical
5 Evidence (Ct. Rec. 59) is **GRANTED**.

6 2. Defendant's Motion to Withdraw Guilty Plea (Ct. Rec. 63) is
7 **GRANTED**.

8 3. The Government's Motion for Order of Dismissal Without
9 Prejudice (Ct. Rec. 68) is **GRANTED**.

10 4. The Indictment (Ct. Rec. 1) shall be **DISMISSED WITHOUT**
11 **PREJUDICE**.

12 5. All pending motions are **DENIED AS MOOT** and hearings **STRICKEN**.

13 6. Defendant shall be **RELEASED**.

14 **IT IS SO ORDERED.** The District Court Executive is hereby directed
15 to enter this Order and furnish copies to counsel, the U.S. Probation
16 Office, and the U.S. Marshal's Office.

17 DATED this 12th day of May 2009.

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19 s/ Edward F. Shea
20 EDWARD F. SHEA
21 United States District Judge

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